Nam Leong Department Store (Miri) Sdn Bhd v Public Prosecutor

HIGH COURT (MIRI) — CRIMINAL APPEAL NO MR-41–19/11 OF 2011
STEPHEN CHUNG JC
16 MARCH 2012

Criminal Law — Food Act 1983 — s 13B(1) and (2) — Samples of salt that were analysed found to contain only 13.7mg/kg of iodine — Appellant convicted and sentenced — Appeal — Whether prosecution established prima facie case against appellant — Whether samples seized had been offered for sale to public — Whether prosecution failed to establish that chemist was expert in analysis of salt for detection of iodine — Whether magistrate failed to consider appellant's defence — Whether appellant had taken reasonable steps to ascertain that sale of salt would not constitute an offence

Criminal Procedure — Sentencing — Appeal against sentence — Appellant convicted under s 13B(1) and (2) of the Food Act 1983 — Whether sentence manifestly excessive — Whether magistrate had taken irrelevant factor into consideration

Two officers from the Pejabat Kesihatan Miri ('PKM'), who had visited the appellant's departmental store to take two types of salt samples for the purpose of analysis, bought three packets of fine salt for analysis under the Food Act 1983 ('the Act'). The analysis showed that the salt samples from the packets labeled 'Nam Leong' contained 13.7mg/kg of iodine. Vide a *gazette* notification made pursuant to reg 285(3) of the Food Regulations 1985 ('the Regulations'), Sarawak was designated as an area in which the salt offered for sale had to contain not less than 20mg/kg and not more than 30 mg/kg of iodine. The prosecution claimed that the appellant had not complied with the requirements of the Regulations and the gazette notification. Consequently, the appellant was charged under s 13B(1) read together with s 13B(2) of the Act for offering for sale three packets of salt that were found to contain only 13.7mg/kg of iodine. In response, the appellant claimed that it had assumed that the levels of iodine in the salt, which it had bought from a licensed importer and then repacked into smaller packets for sale, were in compliance with the law. The appellant was found guilty, convicted and sentenced to a fine of RM17,000 and in default three months imprisonment. This was the appellant's appeal against both the conviction and sentence. The appellant submitted that the magistrate had erred in not finding that the prosecution had failed to establish that the three packets of salt were displayed for sale. The

appellant claimed that it had not voluntarily sold the packets of salt to the officers from the PKM but that it had been compelled by the officers to sell the salts to them for the purpose of the analysis. The appellant's next ground of appeal was that the prosecution had failed to establish that the chemist who analysed the salt was an expert in the analysis of salt for the detection of iodine therein. It was also the appellant's contention that there no intention or lack of willfulness on its part to commit the offence. The appellant also submitted that the sentence imposed against it was excessive.

Held, dismissing the appeal against conviction but substituting the penalty against the appellant:

(1) The evidence showed that both the officers who visited the appellant's premises were authorised officers. These officers had complied with the requirements of the provisions of the Act when they seized the three packets of salt as samples for analysis or examination. Again based on the facts the trial court had correctly found that the appellant was the packer of the three packets of salt seized, which bore the name of the appellant. Under s 25 of the Act, the purchase of the three packets of salt was deemed to be a purchase for human consumption unless the seller proves to the contrary (see paras 5–8).

(2) The chemist, who had carried out the analysis in this case, had been appointed by the Minister as an analyst under s 3(1) of the Act and it was clear that only qualified persons would be appointed as analysts under this provision. Under s 20 of the Act, the analysis carried out by this chemist and the certificate of such analysis should be accepted as prima facie evidence of the facts stated therein. Further, during cross-examination it was not put to the chemist that the analysis carried out by her was wrong or that the findings stated in her certificate were wrong. The appellant also did not tender another analysis to show that the chemist's certificate was wrong. As such, there was no merit on the appellant's ground of appeal that the prosecution had failed to establish that the chemist was an expert in the analysis of salt for the detection of iodine therein. The prosecution had thus made out a prima facie case against the appellant (see paras 11–14).

(3) The magistrate had in fact considered the appellant's defence that it had taken all reasonable steps to ascertain that the sale of salt would not constitute an offence against the Act. At the same time the evidence showed that the appellant had neither made any enquiry or asked for proof from the importer to ensure that it had complied with the law before it repacked and offered the salt for sale in its premises, nor made any enquiry with the PKM to ensure that the salt complied with the law before offering the same for sale at its premises. As such, the magistrate was correct in finding that the appellant had not shown that it had taken

all reasonable steps to ascertain that the sale of the salt would not constitute an offence against the Act or the Regulations (see paras 22–24).

(4) Although the appellate court should be slow to disturb the sentence imposed, the magistrate had erred in taking into consideration an irrelevant factor that had not been proven, namely that most rural people had goiter for taking salt without iodine, when passing the sentence. Further, this was the first offence committed by the appellant. As such, on the facts and circumstances, the fine of RM17,000 was excessive and ought to be set aside. Instead, a fine of RM10,000 was considered a more appropriate penalty (see paras 26–30).

[Bahasa Malaysia summary

Dua pegawai daripada Pejabat Kesihatan Miri ('PKM'), yang telah melawat gedung beli-belah perayu untuk mengambil dua jenis sampel garam bagi tujuan analisis, telah membeli tiga bungkus garam halus untuk analisis di bawah Akta Makanan 1983 ('Akta tersebut'). Analisis itu menunjukkan bahawa sampel-sampel garam daripada bungkusan-bungkusan yang dilabelkan 'Nam Leong' mengandungi iodin sebanyak 13.7mg/kg. Melalui *warta pemberitahuan* yang dibuat menurut peraturan 285(3) Peraturan-Peraturan Makanan 1985 ('Peraturan-Peraturan tersebut'), Sarawak telah dinamakan sebagai kawasan yang mana garam yang ditawarkan untuk dijual hendaklah mengandungi tidak kurang daripada 20mg/kg dan tidak lebih daripda 30mg/kg iodin. Pendakwaan mendakwa bahawa perayu tidak mematuhi keperluan-keperluan Peraturan-Peraturan tersebut dan pemberitahuan *warta* tersebut. Berikutan itu, perayu telah dituduh di bawah s 13B(1) dibaca bersama s 13B(2) Akta tersebut kerana menawarkan untuk jualan tiga bungkusan garam yang didapati mengandungi hanya 13.7mg/kg iodin. Sebagai respons, perayu mendakwa bahawa ia telah mengandaikan bahawa tahap iodin dalam garam itu, yang telah dibeli daripda pengimport berlesen dan kemudian dibungkus semula dalam bungkusan-bungkusan kecil untuk jualan, telah mematuhi undang-undang. Perayu didapati bersalah, disabitkan dan dihukum dengan denda sejumlah RM17,000 dan jika gagal membayar denda boleh dipenjarakan selama tiga bulan. Ini adalah rayuan perayu terhadap kedua-dua sabitan dan hukuman. Perayu telah berhujah bahawa majistret terkhilaf kerana tidak mendapati bahawa pendakwaan telah gagal untuk membuktikan tiga bungkusan garam itu dipamerkan untuk jualan. Perayu mendakwa bahawa ia tidak menjual secara sukarela garam tersebut kepada pegawai-pegawai tersebut bagi tujuan analisis. Alasan rayuan perayu selanjutnya adalah bahawa pendakwaan telah gagal membuktikan bahawa ahli kimia yang menganalisis garam itu merupakan seorang pakar dalam analisis garam untuk mengesan iodin di dalamnya. Perayu juga berhujah bahawa tidak ada niat atau kurangnya keinginan di pihaknya untuk melakukan

kesalahan. Perayu juga berhujah bahawa hukuman yng dikenakan terhadapnya adalah melampau.

Diputuskan, menolak rayuan terhadap sabitan tetapi menggantikan penalti terhadap perayu:

(1) Keterangan menunjukkan kedua-dua pegawai yang melawat premis perayu merupakan pegawai-pegawai yang diberi kuasa. Pegawai-pegawai tersebut telah mematuhi keperluan-keperluan peruntukan-peruntukan Akta tersebut apabila mereka merampas tiga bungkusan garam itu sebagai sampel untuk analisis atau pemeriksaan. Juga berdasarkan fakta mahkamah perbicaraan telah dengan betul mendapati perayu adalah pembungkus ketiga-tiga bungkusan garam yang dirampas itu, yang membawa nama perayu. Di bawah s 25 Akta tersebut, belian tiga bungkusan garam itu dianggap sebagai belian untuk kegunaan manusia kecuali jika penjual membuktikan sebaliknya (lihat perenggan 5–8).

(2) Ahli kimia, yang telah menjalankan analisis kes ini, telah dilantik oleh menteri sebagai ahli analisis di bawah s 3(1) Akta tersebut dan adalah jelas bahawa hanya orang berkelayakan akan dilantik sebagai penganalisis di bawah peruntukan ini. Di bawah s 20 Akta tersebut, analisis yang dijalankan oleh penganalisis ini dan sijil analisis sedemikian hendaklah diterima sebagai keterangan prima facie fakta dinyatakan di dalamnya. Selanjutnya, semasa pemeriksaan balas tidak pula dikemukakan kepada penganalisis itu bahawa analisis yang dijalankan olehnya adalah salah atau bahawa penemuan yang dinyatakan dalam sijilnya adalah salah. Perayu juga tidak menenderkan analisis lain untuk menunjukkan bahawa sijil penganalisis itu adalah salah. Oleh itu, tiada merit atas alasan rayuan perayu bahawa pendakwaan telah gagal membuktikan bahawa ahli kimia itu seorang pakar dalam menganalisis garam bagi mengesan iodin di dalamnya. Pendakwaan dengan itu telah membuktikan kes prima facie terhadap perayu (lihat perenggan 11–14).

(3) Majistret telah mengambil kira pembelaan perayu yang ia telah mengambil segala langkah munasabah untuk memastikan bahawa jualan garam itu tidak membentuk kesalahan terhadap Akta tersebut. Pada masa sama keterangan menunjukkan bahawa perayu tidak membuat apa-apa siasatan atau bertanyakan bukti daripada pengimport untuk memastikan bahawa ia telah mematuhi undang-undang sebelum ia membungkus semula dan menawarkan untuk jualan garam tersebut di premisnya, ia juga tidak membuat apa-apa siasatan dengan PKM untuk memastikan bahawa garam itu mematuhi undang-undang sebelum menawarkan yang sama untuk dijual di premisnya. Oleh itu, majistret adalah betul kerana mendapati perayu tidak menunjukkan bahawa ia telah mengambil segala langkah munasabah untuk memastikan bahawa

jualan garam itu tidak akan membentuk kesalahan terhadap Akta tersebut atau Peraturan-Peraturan tersebut (lihat perenggn 22–24).

(4) Walaupun mahkamah rayuan patut tidak campur tangan dengan hukuman yang dikenakan, majistret telah terkhilaf untuk mempertimbangkan faktor tidak relevan yang tidak dibuktikan apabila menjatuhkan hukuman, iaitu bahawa kebanyakan penduduk luar bandar seringkali mengambil garam tanpa iodin. Selanjutnya, ini merupakan hukuman pertama yang dilakukan oleh perayu. Oleh itu, berdasarkan fakta dan keadaan, denda RM17,000 adalah melampau dan patut diketepikan. Sebaliknya, denda RM10,000 dianggap penalti yang lebih sesuai (lihat perenggan 26–30).]

Notes

For cases on appeal against sentence, see 5(2) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 3702–3770.

Cases referred to

Khoo Hi Chiang v PP and another appeal [1994] 1 MLJ 265; [1994] 2 CLJ 151, SC (refd)
Lim Chin Aik v Regina [1963] 1 MLJ 50; [1962] 1 LNS 86, PC (refd)
PP v Koo Cheh Yew & Anor [1980] 2 MLJ 235; [1980] 1 LNS 61, FC (refd)
PP v Lam San [1991] 3 MLJ 426; [1991] 3 CLJ 2410, SC (refd)
PP v Lin Lian Chen [1991] 1 MLJ 316, HC (refd)
PP v Yuvaraj [1969] 2 MLJ 89, PC (refd)
Samundee Devan a/l Kerishnan Muthu v PP [2009] 1 MLJ 697; [2009] 1 CLJ 498, CA (refd)
Wong Chop Saow v PP [1965] 1 MLJ 247 (refd)

Legislation referred to

Evidence Act 1950 ss 45, 114(e)
Food Act 1983 ss 2, 3, 3(1), (2), 4(14), 5(1), 6(1), 7(1), 13B(1), (2), (4), 20(i), 22(a), (b), 23, 25(1), (2), 29(1), (2), (3)
Food Regulations 1985 reg 285(3)

Ranbir Singh (Ranbir S Sangha & Co Advocates) for the appellants.
Shahidah Muslimah bt Roslan (Deputy Public Prosecutor) for the respondent.

Stephen Chung JC:

[1] The appellant was charged and convicted under s 13B(1) of the Food Act 1983 read together with s 13B(2)(e) of the same Act and reg 285(3) of the Food Regulations 1985 and was sentenced under s 13B(4) of the Food Act 1983 to a fine of RM17,000 in default three months imprisonment. This appeal is against both the conviction and sentence.

[2] The amended charge against the appellant read as follows: **A**

> Bahawa kamu pada 22 November 2010 lebih kurang jam 9:50 pagi, di premis Nam Leong Department Store Sdn. Bhd. (504998-M), GE 14, Ground Floor, Wisma Pelita Tunku, Jalan Puchong di Daerah Miri dalam Negeri Sarawak telah menjual kepada Encik Roddy Geoffery, Nombor Kad Pengenalan 731292-13-5691, seorang Pegawai Berkuasa di bawah Akta Makanan 1983 yang memiliki Kad Kuasa Bernombor 2556 melalui Katerina Anchang Ak. Bundak, Nombor Kad Pengenalan 770525-13-5022 sebanyak tiga (3) bungkus garam halus seberat 1kg setiap bungkusan yang mana setelah dianalisa didapati mengandungi 13.7mg/kg iodin, kurang daripada 20mg/kg iodin kadar yang ditetapkan Peraturan 285(3), Peraturan-Peraturan Makanan 1985 dan dengan ini telah melanggar Peraturan 285(3) Peraturan-Peraturan Makanan 1985. **B** **C**
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> Oleh itu, kamu telah melakukan kesalahan menjual makanan yang diadukkan di bawah Seksyen 13B(1) Akta Makanan 1983 dibaca bersama Seksyen 13B(2)(e) Akta yang sama dan jika disabitkan kesalahan boleh dihukum di bawah Seksyen 13B(4) Akta yang sama. **D**

[3] The facts were as follows. On 22 November 2010, PW2 and PW3, both of whom were working with the Pejabat Kesihatan, Miri, went to the appellant's departmental store at Wisma Pelita Tunku to take food samples for analysis under the Food Act. On arrival, PW2 met PW6, who was a supervisor of the appellant at the premises. After PW2 informed PW6 of the purpose of the visit, he went to the food racks to choose food samples for the analysis. He chose two types of salt. He bought three 1kg packets of fine salt at RM1.20 each, with a 'Nam Leong' price tag on each of the packets. He also bought three 500g iodine salt at 80 cents each. He took the packets of salts to the cash counter and paid for them. He was issued with a computerised printout receipt for his purchases. He also asked PW6 to issue a hand-written cash bill for the purchases. PW2 then labeled and sealed the two types of salt he had bought in transparent plastic in the presence of PW6 and issued to her a Food Sampling Notice under the Food Act. The samples were sent to the Chemistry Department at Bintulu for analysis which was carried out by PW1. Her analysis showed that the salt sample from the packet labeled 'Nam Leong' contained 13.7mg/kg of iodine. **E** **F** **G** **H**

[4] I shall deal with Grounds 2.1, 2.2, 2.5, 2.6 and 2.11 of the appeal together. The learned counsel for the appellant submitted that the learned magistrate had erred in not finding that the prosecution had failed to establish that the three packets of salt seized were displayed for sale. He also submitted the learned magistrate had erred in not finding that the appellant did not voluntarily sell the salts for the purposes of household use and human consumption as is required by reg 285(3) of the Food Act. It was submitted that **I**

A the appellant was compelled by PW2 to sell the salts for the purpose of the analysis. After reading the appeal record and the submissions, there is no merit on the above grounds of appeal.

B **[5]** The evidence showed that both PW2 and PW3 were authorised officers appointed under s 3(2) of the Act. The evidence showed that the appellant operated the departmental store at Wisma Pelita Tunku where the salts and other goods were displayed for sale in the premises. There was no evidence to show that access or entry to the store was restricted. It was open to the public and any customer could enter the store to view, choose and or buy any of the C goods which were on display and for sale in the store.

[6] Section 5(1) of the Act provides that any authorised officer on payment or tender to any person selling food or to his agent or servant, of the current D market value of the food, may at any place demand and select and take or obtain samples of the food for the purpose of analysis. Section 6(1) provides that where it is intended to submit any sample of any food for analysis, the authorised officer purchasing or otherwise procuring the sample shall inform the seller or his agent or servant selling the food that he intends to have the E sample analysed by an analyst. Section 4(14) provides that an authorised officer may submit any food seized by him or any sample from it or any other sample taken by him to any approved laboratory for analysis or examination. Food is defined very widely in s 2 of the Act and includes every article manufactured, sold or represented for use as food or drink for human consumption. It is F common knowledge that salt is normally used for human consumption and comes within the definition of 'food'. From the above facts, PW2 had complied with the requirements of these provisions.

[7] Pursuant to s 22(a) of the Act, any evidence that the package containing G any food to which this Act applies bore the name, address or registered mark of an importer, manufacturer or packer shall be prima facie evidence that the food was imported, manufactured or packed, as the case may be, by each of the persons whose name, address or registered mark is borne on the package. Again from the above facts, the three packets of 1kg fine salt bore the name of the H appellant on the price tag and the trial court had come to a finding that the appellant was the packer of the three packets of salt.

[8] Section 22(b) provides that any substance commonly used for human consumption which is sold or offered or exposed or kept for sale shall be I presumed, until the contrary is proved, to have been sold, or as the case may be, to be intended for sale for human consumption. Section 25(1) provides that when any food is sold or exposed or offered for sale it shall, unless the contrary is proved, be deemed to be sold or exposed or offered for sale for human consumption. Section 25(2)) adds that the purchase and sale of a sample of

food under the provisions of the Act for the purpose of analysis shall be deemed to be a purchase and sale of such food for human consumption unless the seller proves that the bulk from which such sample was taken was not offered or exposed or intended for sale for human consumption.

[9] The next ground of appeal is that the learned magistrate erred in failing to find that the prosecution had failed to establish that the chemist ('PW1') was an expert in the analysis of salt for the detection of iodine therein. The appellant submitted that although the prosecution had led evidence pertaining to her qualifications and experience on 'various food samples', they might or might not cover 'iodine in salt' because PW1 did not specify that she had training and experience in analysing 'iodine in salt'. The appellant referred to s 45 of the Evidence Act and to the cases of *Public Prosecutor v Lin Lian Chen* [1991] 1 MLJ 316 and *Wong Chop Saow v Public Prosecutor* [1965] 1 MLJ 247 in support of the submissions.

[10] From the appeal record, PW1 had stated her qualifications and trainings as an expert or chemist and that she had given evidence as an expert in a trial before where her evidence was accepted by the court. This was her second time in court giving evidence as an expert. By doing so, she had complied with the requirements stated in *Wong Chop Saow v Public Prosecutor*. The decision in *Public Prosecutor v Lin Lian Chen* on expert evidence especially relating to drug cases should be read in the light of the decisions in *Public Prosecutor v Lam San* [1981] 3 MLJ 426; [1991] 3 CLJ 2410, *Khoo Hi Chiang v Public Prosecutor* [1994] 1 MLJ 265; [1994] 2 CLJ 151 and *Samundee Devan a/l Kerishnan Muthu v Public Prosecutor* [2009] 1 MLJ 697; [2009] 1 CLJ 498.

[11] In this case, PW1 was appointed by the Minister as an analyst under s 3(1) of the Act which also provides that the Minister may make regulations concerning their qualifications, conduct and duties. It is clear that only qualified persons would be appointed as analysts under s 3(1) of the Act otherwise it would be rendered redundant and the Minister would have contravened the provision under s 3(1). There was no evidence that that had happened in the appointment of PW1 as an analyst under the Act. The court may presume that judicial and official acts have been regularly performed: s 114(e) of the Evidence Act. PW1 had produced the certificate of her appointment as an analyst and that was prima facie evidence of her qualification as an analyst under the Act to carry out the analysis required under the Act.

[12] PW1, after carrying out the analysis of the sample of salt taken from the premises of the appellant, had prepared and signed a certificate in the form prescribed by s 7(1) of the Act and regulations. Section 20 of the Act provides

that in any proceedings under the Act a certificate of analysis purporting to be signed by the analyst shall be accepted as prima facie evidence of the facts stated therein.

[13] The appellant had pursuant to s 20(i) required PW1 to attend the trial and to be cross-examined. It was not put to PW1 that the analysis carried out by her was not accurate or wrong. It was not put to her that the findings stated in the certificate were wrong. The appellant was at liberty to send the sample to another or independent analyst for analysis but did not do so. The appellant also did not lead any evidence or tender another analysis or report to show that her analysis and or findings as stated in the certificate were not accurate or wrong.

[14] Regulation 285(3) provides that the Minister may by notification in the *Gazette* direct that in certain areas no person shall manufacture for sale, sell, expose or offer for sale, consign or deliver salt for household use and human consumption unless there has been added to it potassium iodide or iodate, or sodium iodide or iodate in a proportion equivalent to not less than 20mg/kg and not more than 30mg/kg of iodine. Sarawak was designated as such an area in the *Gazette* vide PU(B) 266. The certificate signed by PW1 stated that the sample taken from the appellant contained only 13.7mg/kg of iodine and did not comply with the requirements of Regulation 285(3) and the *Gazette* notification. The three packets of salt bought by PW2 had contravened the provisions of s 13B(1) and (2)(e) of the Act. Therefore there is no merit on this ground of appeal. From the appeal record, the prosecution had made out a prima facie case against the appellant.

[15] In its defence, the appellant led evidence to show that it purchased the salt from Tong Seng Huat, a licensed importer which imported the salt from Thailand, and repacked the salt into smaller packets for sale to the public. It was the appellant's case that it was reasonable for the appellant to expect the importer to ensure that the levels of iodine in the salt complied with the law. It was the appellant's case that it would be unreasonable to expect the appellant to have every batch of salt purchased to be analysed for its iodine content taking into account the low retail price of the salt.

[16] The appellant referred to s 23 of the Act and submitted that intention or lack of knowledge is a defence under the section. It was submitted that the learned magistrate was wrong in ruling that the offence is one of strict liability and that intention or knowledge to prove wilfulness was not pertinent in proving the charge and was not a valid defence. It was submitted that based on its evidence ie that it relied on the importer to ensure that the salt imported complied with the Act, that there was no intention or that there was a lack of wilfulness on the part of the appellant to commit the offence. It submitted that

on a balance of probabilities it had raised a reasonable doubt as to its guilt or culpability under the charge made against it and that the learned magistrate had erred in failing to rule as such.

[17] From the appeal record, notwithstanding what she had said in her decision at the end of the appellant's defence regarding intention and the offence being one of strict liability, the learned magistrate had in fact considered the evidence of the appellant, the provision of s 23 of the Act and whether the appellant had taken all reasonable steps to ascertain that the sale of the salt would not constitute an offence against the Act and its regulations in coming to her decision.

[18] Section 23 provides that in a prosecution for selling any food contrary to the provisions of the Act or of any regulation, it shall be no defence that the defendant did not act wilfully unless he also proves that he took all reasonable steps to ascertain that the sale of the food would not constitute an offence against the Act or its regulations.

[19] Section 29(1) of the Act goes even further. It provides that subject to sub-ss (2)–(3), the importation of any food which does not comply with the provisions of the Act or any regulation made thereunder is prohibited. Subsections (2)–(3) are not applicable to this case as they concern the importation of goods for relabeling or reprocessing of the prohibited goods so that they comply with the Act.

[20] It was not the appellant's case that it did not know or was ignorant of the law or the requirements of the Act and regulations made thereunder. It was also not the appellant's case that it could not possibly with reasonable diligence, if it had reasons to put itself on enquiry, know of the existence of the law or prohibition. The requirements of reg 285(3) as it applied to Sarawak had been published in the *Gazette*. The law presumes that the appellant had notice of the requirements after the publication in the *Gazette*: see *Public Prosecutor v Koo Cheh Yew & Anor* [1980] 2 MLJ 235; [1980] 1 LNS 61.

[21] It was the appellant's case that it bought the salt from the importer and it was reasonable for the appellant to expect the importer to ensure the levels of iodine in the salt were in compliance with the law. DW1 said that the appellant assumed the salt which was imported by a licensed importer had been examined by the local authorities. He said they trusted and solely relied on the importer that the salt would comply with the law. From the stand taken by the appellant in the trial and in this appeal, it was apparent that the appellant knew or was aware of the provisions of ss 23 and 29 of the Act and the regulations under the Act.

[22] Therefore it was not reasonable for the appellant to have made such an assumption. The law imposed certain obligations or responsibilities on the appellant as a seller of goods for human consumption. The evidence showed that the appellant did not make any enquiry with the importer to find out or to ensure that the importation of the salt was not prohibited and or had complied with the law. The evidence showed that the appellant did not make any enquiry or asked for proof from the importer to ensure that the salt complied with the law, in particular with reg 285(3), before it repacked and offered the salt for sale in its premises. The appellant also did not make any enquiry with the Pejabat Kesihatan, Miri to ensure that the salt complied with the law before the appellant offered the repacked salt for sale in its premises. These were simple things the appellant could have done, directly or indirectly, by inspection or enquiry or by refusing to buy from the importer unless the salt complied with the requirements of the Act: see *Lim Chin Aik v Regina* [1963] 1 MLJ 50; [1962] 1 LNS 86.

[23] From the appeal record, I agree with the learned magistrate that the appellant had not shown that it had taken all reasonable steps to ascertain that the sale of the salt would not constitute an offence against the Act or any regulation made thereunder.

[24] From the evidence presented before the court, as per the appeal record, the appellant had failed to rebut the presumptions on the balance of probabilities: *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89. The appellant had also failed to raise any reasonable doubt on the prosecution's case. Therefore the appeal against conviction is dismissed.

[25] On the appeal against sentence, it was submitted that the fine of RM17,000 imposed on the appellant was excessive. It was submitted that the learned magistrate had taken into consideration an irrelevant factor ie the submissions by the prosecution that most rural people have goiters for taking salt without iodine and this showed how important iodine in salts are to public health. It was submitted that the magistrate had erred when she implied that the salt sold by the appellant was unsafe for human consumption. It was submitted that there was no statistics tendered to support these and that the prosecution did not call any medical or expert evidence to support these contentions.

[26] An appellate court should be slow to disturb the sentence imposed by the learned magistrate unless it was passed on wrong sentencing principles or was manifestly excessive or inadequate on the facts and circumstances of the case. The appellate court will not interfere just because it may pass a different sentence. The appeal record showed that in passing sentence the learned magistrate had taken into consideration the mitigation of the appellant, the

submissions of the prosecution, that the appellant was found guilty after a trial lasting several days and public interest. She said the prime consideration was public interest as the case involved food items sold for human consumptions.

[27] Reading her decision on the sentence, although she did not specifically referred to what were said by the prosecution, she had taken the submissions of the prosecution into consideration in passing the sentence. The prosecution had submitted that most rural people have goiters for taking salt without iodine. The prosecution did not call any witness or tender any statistics, facts or evidence in support thereof. The learned magistrate in taking that submission of the prosecution, which had not been proven, into account, had taken an irrelevant factor into consideration in passing the sentence and had erred.

[28] Although the provisions in the Act upon which the appellant was convicted are for the protection of public health, this was the first offence committed by the appellant. This was not a case where the appellant manufactured adulterated salt or imported adulterated salt or adulterated the salt for sale. The facts showed that the appellant had bought the salt from a licensed importer and repacked the salt into smaller packets for sale without taking steps to ascertain whether the salt complied with the Food Act.

[29] The penalty provided for under s 13B(4), upon conviction, is a fine not exceeding RM20,000 or imprisonment for a term not exceeding five years or to both. On the facts and circumstances of this case, the fine of RM17,000 imposed for a first offence was excessive and ought to be set aside.

[30] A fine of RM10,000 is a more appropriate penalty on the facts and circumstances of this case and the same is imposed or substituted as the penalty against the appellant. The appeal against sentence is to that extent allowed.

Appeal against conviction dismissed but penalty against appellant substituted.

Reported by Kohila Nesan